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DEPARTMENT OF COMMERCE

Bureau of Industry and Security

15 CFR Part 748

[Docket No. 140506409-4409-01]

RIN 0694 –AG15

Amendments to Existing Validated End-User Authorizations in the People’s Republic of China: Samsung China Semiconductor Co. Ltd and Semiconductor Manufacturing International Corporation

AGENCY: Bureau of Industry and Security, Commerce.

ACTION: Final rule.

SUMMARY: In this rule, the Bureau of Industry and Security (BIS) amends the Export Administration Regulations (EAR) to revise existing authorizations for Validated End-Users (VEUs) Samsung China Semiconductor Co. Ltd. (Samsung China) and Semiconductor Manufacturing International Corporation (SMIC) in the People’s Republic of China (PRC). Specifically, BIS amends Supplement No. 7 to part 748 of the EAR to change the address of the facility used by Samsung China. In addition, BIS adds a facility to the list of eligible destinations and an item to the list of eligible items for SMIC.

DATES: This rule is effective [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER].

FOR FURTHER INFORMATION CONTACT: Karen Nies-Vogel, Chair, End-User Review Committee, Bureau of Industry and Security, U.S. Department of Commerce, 14th Street &

Pennsylvania Avenue, NW, Washington, DC 20230; by telephone: (202) 482-5991, fax: (202) 482-3991, or e-mail: ERC@bis.doc.gov.

SUPPLEMENTARY INFORMATION:

Background

Authorization Validated End-User

Validated End-Users (VEUs) are designated entities located in eligible destinations to which eligible items may be exported, reexported, or transferred (in-country) under a general authorization instead of a license. The names of the VEUs, as well as the dates they were so designated, and their respective eligible destinations and items are identified in Supplement No. 7 to part 748 of the Export Administration Regulations (EAR). Under the terms described in that supplement, VEUs may obtain eligible items without an export license from the Bureau of Industry and Security (BIS), in conformity with Section 748.15 of the EAR. Eligible items vary between VEUs, but may include commodities, software, and technology, except those controlled for missile technology or crime control reasons on the Commerce Control List (CCL) (part 774 of the EAR).

VEUs are reviewed and approved by the U.S. Government in accordance with the provisions of Section 748.15 and Supplement Nos. 8 and 9 to part 748 of the EAR. The End-User Review Committee (ERC), composed of representatives from the Departments of State, Defense, Energy, and Commerce, and other agencies, as appropriate, is responsible for administering the VEU program. BIS amended the EAR in a final rule published on June 19, 2007 (72 FR 33646) to create Authorization VEU.

Amendments to Existing Validated End-User Authorizations in the People’s Republic of China (PRC)

Revision to the List of “Eligible Items (By ECCN)” for Validated End-User Samsung China Semiconductor Co. Ltd (Samsung China)

This final rule amends Supplement No. 7 to part 748 of the EAR to change the address of the Samsung China facility to which eligible items may be exported, reexported or transferred (in-country) using Authorization VEU. BIS makes this change pursuant to a request from Samsung China advising BIS that Samsung China received verification of the final address of its facility from the Chinese government. Samsung China’s VEU-eligible facility, which is located in an area being newly developed for corporate use, has not moved. The list of eligible items for Samsung China remains the same. BIS added Samsung China as a VEU in Supplement No. 7 to part 748 in a rule published in the *Federal Register* on July 10, 2013 (78 FR 41291).

Prior Address of Samsung China Destination:

Samsung China Semiconductor Co. Ltd.
Xinglong Street, Chang’an District
Xi’an, People’s Republic of China 710065

New Address for Samsung China:

Samsung China Semiconductor Co. Ltd.
No. 1999, North Xiaohe Road
Xi’an, China 710119

Revisions to the List of “Eligible Destinations” and “Eligible Items (By ECCN)” for Validated End-User Semiconductor Manufacturing International Corporation (SMIC)

This final rule also amends Supplement No. 7 to part 748 of the EAR to add a facility to the list of SMIC facilities to which eligible items may be exported, reexported or transferred (in-country) using Authorization VEU, bringing the number of SMIC's VEU-authorized facilities in the PRC to a total of five. BIS also adds an ECCN to SMIC's list of eligible items that may be sent to the five facilities. The ECCN added in this rule to SMIC's VEU authorization is ECCN 3A233 (certain types of mass spectrometers). BIS makes these changes pursuant to requests from SMIC. SMIC requested the addition of the new VEU-eligible destination in order to facilitate shipments to its new business venture.

Additional SMIC Destination:

Semiconductor Manufacturing North China (Beijing) Corporation
No. 18 Wen Chang Road, Building 9
Beijing Economic-Technological Development Area
Beijing, China 100176

Eligible Items (by ECCN) That May Be Exported, Reexported or Transferred (In-Country) to the Eligible Destination Identified Under Semiconductor Manufacturing International Corporation Validated End-User Authorization:

ECCNs 1C350.c.3, 1C350.d.7, 2B006.b.1, 2B230, 2B350.d.2, 2B350.d.3, 2B350.g.3, 2B350.i.3, 3A233, 3B001.a, 3B001.b, 3B001.c, 3B001.e, 3B001.f, 3C001, 3C002, 3C003, 3C004, 5B002, and 5E002 (limited to "technology" according to the General Technology Note for the "production" of integrated circuits controlled by ECCN 5A002 that have been classified by BIS as eligible for License Exception ENC under paragraph (b)(2) or (b)(3) of Section 740.17 of the EAR, or classified by BIS as a mass market item under paragraph (b)(3) of Section 748.15 of the EAR).

Authorization VEU eliminates the burden on exporters and reexporters of preparing individual license applications because the export, reexport and transfer (in-country) of the eligible items specified for each VEU may be made under general authorization instead of under individual licenses.

Export Administration Act

Since August 21, 2001, the Export Administration Act has been in lapse and the President, through Executive Order 13222 of August 17, 2001 (3 CFR, 2001 Comp., p. 783 (2002)), as amended by Executive Order 13637 of March 8, 2013, 78 FR 16129 (March 13, 2013), and as extended most recently by the Notice of August 8, 2013, 78 FR 49107 (August 12, 2013), has continued the EAR in effect under the International Emergency Economic Powers Act. BIS continues to carry out the provisions of the Export Administration Act, as appropriate and to the extent permitted by law, pursuant to Executive Order 13222, as amended by Executive Order 13637.

Rulemaking Requirements

1. Executive Orders 13563 and 12866 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, reducing costs, harmonizing rules, and promoting flexibility. This rule has been determined to be not significant for purposes of Executive Order 12866.

2. This rule involves collections previously approved by the Office of Management and Budget (OMB) under Control Number 0694-0088, “Multi-Purpose Application,” which carries a burden hour estimate of 43.8 minutes to prepare and submit form BIS-748; and for recordkeeping, reporting and review requirements in connection with Authorization VEU,

which carries an estimated burden of 30 minutes per submission. This rule is expected to result in a decrease in license applications submitted to BIS. Total burden hours associated with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) (PRA) and OMB Control Number 0694-0088 are not expected to increase significantly as a result of this rule.

Notwithstanding any other provisions of law, no person is required to respond to, nor be subject to a penalty for failure to comply with a collection of information subject to the requirements of the PRA, unless that collection of information displays a currently valid OMB Control Number.

3. This rule does not contain policies with Federalism implications as that term is defined under Executive Order 13132.

4. Pursuant to the Administrative Procedure Act (APA), 5 U.S.C. 553(b)(B), BIS finds good cause to waive requirements that this rule be subject to notice and the opportunity for public comment because they are unnecessary. In determining whether to grant VEU designations, a committee of U.S. Government agencies evaluates information about and commitments made by candidate companies, the nature and terms of which are set forth in 15 CFR part 748, Supplement No. 8. The criteria for evaluation by the committee are set forth in 15 CFR 748.15(a)(2).

The information, commitments, and criteria for this extensive review were all established through the notice of proposed rulemaking and public comment process (71 FR 38313 (July 6, 2006) (proposed rule), and 72 FR 33646 (June 19, 2007) (final rule)). Given the similarities between the authorizations provided under the VEU program and export licenses (as discussed further below), the publication of this information does not establish new policy. In publishing this final rule, BIS updates the address of an existing VEU and adds an eligible destination and

an item to a second existing VEU. These changes have been made within the established regulatory framework of the Authorization VEU program. Further, this rule does not abridge the rights of the public or eliminate the public's option to export under any of the forms of authorization set forth in the EAR.

Publication of this rule in other than final form is unnecessary because the authorizations granted in the rule are consistent with the authorizations granted to exporters for individual licenses (and amendments or revisions thereof), which do not undergo public review. In addition, as with license applications, VEU authorization applications contain confidential business information, which is necessary for the extensive review conducted by the U.S. Government in assessing such applications. This information is extensively reviewed according to the criteria for VEU authorizations, as set out in 15 CFR 748.15(a)(2). Additionally, just as the interagency reviews license applications, the authorizations granted under the VEU program involve interagency deliberation and result from review of public and non-public sources, including licensing data, and the measurement of such information against the VEU authorization criteria. Given the nature of the review, and in light of the parallels between the VEU application review process and the review of license applications, public comment on this authorization and subsequent amendments prior to publication is unnecessary. Moreover, because, as noted above, the criteria and process for authorizing and administering VEUs were developed with public comments, allowing additional public comment on this amendment to individual VEU authorizations, which was determined according to those criteria, is unnecessary.

Section 553(d) of the APA generally provides that rules may not take effect earlier than thirty (30) days after they are published in the *Federal Register*. BIS finds good cause to waive the 30-day delay in effectiveness under 5 U.S.C. 553(d)(3) because the delay would be contrary

to the public interest. BIS is simply amending the list of VEU authorizations by adding a new end user, consistent with established objectives and parameters administered and enforced by the responsible designated departmental representatives to the End-User Review Committee. Delaying this action's effectiveness could cause confusion regarding which facilitates and items are authorized by the U.S. Government and in turn stifle the purpose of the VEU Program. Accordingly, it is contrary to the public interest to delay this rule's effectiveness.

No other law requires that a notice of proposed rulemaking and an opportunity for public comment be given for this final rule. Because a notice of proposed rulemaking and an opportunity for public comment are not required under the APA or by any other law, the analytical requirements of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) are not applicable. As a result, no final regulatory flexibility analysis is required and none has been prepared.

List of Subjects in 15 CFR Part 748

Administrative practice and procedure, Exports, Reporting and recordkeeping requirements.

Dated: May 21, 2014.

Kevin J. Wolf,

Assistant Secretary for Export Administration.

Accordingly, part 748 of the EAR (15 CFR parts 730 – 774) is amended as follows:

PART 748 – [AMENDED]

1. The authority citation for 15 CFR part 748 continues to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Notice of August 8, 2013, 78 FR 49107 (August 12, 2013).

2. Amend Supplement No. 7 to part 748 by:

a. Revising the the entry for “Samsung China Semiconductor Co. Ltd.” in “China (People’s Republic of)”; and

b. Revising the entry for “Semiconductor Manufacturing International Corporation” in “China (People’s Republic of)” to read as follows:

SUPPLEMENT NO. 7 TO PART 748 - AUTHORIZATION VALIDATED END-USER (VEU): LIST OF VALIDATED END-USERS, RESPECTIVE ITEMS ELIGIBLE FOR EXPORT, REEXPORT AND TRANSFER, AND ELIGIBLE DESTINATIONS

Country	Validated End-User	Eligible Items (By ECCN)	Eligible Destination	Federal Register Citation
Nothing in this Supplement shall be deemed to supersede other provisions in the EAR, including but not limited to § 748.15(c).				
*	*	**	**	*
	Samsung China Semiconductor Co. Ltd.	1C350.c.3, 1C350.d.7, 2B230, 2B350.d.2, 2B350.g.3, 2B350.i.3, 3A233, 3B001.a.1, 3B001.b, 3B001.c, 3B001.e, 3B001.f, 3B001.h, 3C002, 3C004, 3D002, and 3E001 (limited to “technology” for items classified under 3C002 and 3C004 and “technology” for use consistent with the International Technology Roadmap for Semiconductors process for items classified under ECCNs 3B001 and 3B002).	Samsung China Semiconductor Co. Ltd. No. 1999, North Xiaohe Road Xi’an, China 710119	78 FR 41291, 7/10/13. 78 FR 69535, 11/20/13. 79 FR [INSERT PAGE NUMBER], [INSERT DATE OF PUBLICATI ON].
	Semiconductor Manufacturing International Corporation	1C350.c.3, 1C350.d.7, 2B006.b.1, 2B230, 2B350.d.2, 2B350.d.3, 2B350.g.3, 2B350.i.3, 3A233, 3B001.a, 3B001.b, 3B001.c, 3B001.e, 3B001.f, 3C001, 3C002, 3C003, 3C004, 5B002, and 5E002 (limited to “technology” according to the General Technology Note for the “production” of integrated circuits controlled by ECCN 5A002 that have been classified by BIS as eligible for License Exception ENC under paragraph (b)(2) or (b)(3) of	Semiconductor Manufacturing International (Shanghai) Corporation 18 Zhang Jiang Rd., Pudong New Area Shanghai, China 201203.	72 FR 59164, 10/19/07. 75 FR 67029, 11/1/10.
			Semiconductor Manufacturing International (Tianjin) Corporation 19 Xing Hua Avenue Xi Qing Economic Development Area Tianjin, China 300385.	77 FR 10953, 2/24/12. 78 FR 69535, 11/20/13.
			Semiconductor Manufacturing International (Beijing) Corporation, No. 18 Wen Chang Road	79 FR [INSERT PAGE NUMBER],

Country	Validated End-User	Eligible Items (By ECCN)	Eligible Destination	Federal Register Citation
Nothing in this Supplement shall be deemed to supersede other provisions in the EAR, including but not limited to § 748.15(c).				
		Section 740.17 of the EAR, or classified by BIS as a mass market item under paragraph (b)(3) of Section 748.15 of the EAR).	Beijing Economic-Technological Development Area Beijing, China 100176.	[INSERT DATE OF PUBLICATION].
			Semiconductor Manufacturing International (Shenzhen) Corporation Qier Road, Export Processing Zone Pingshan New Area, Shenzhen, China 518118.	
			Semiconductor Manufacturing North China (Beijing) Corporation No. 18 Wen Chang Road, Building 9 Beijing Economic-Technological Development Area Beijing, China 100176	
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